

MEMORIAL

OF

Will. P. Ross, W. S. Coodey, and John Drew, in behalf of the old settlers, or Western Cherokees, complaining that they have been deprived of certain rights accruing under treaty stipulations, &c.

MARCH 15, 1849.

Referred to the Committee on Indian Affairs.

March 16.—Committee discharged, and ordered to be printed.

To the honorable the Senate of the United States :

The memorial of the undersigned, delegate of the Cherokee nation, respectfully represents to your honorable body, that more than two years have elapsed since the treaty of 1846 was made by which the difficulties among the Cherokees, growing out of the operation of the treaty of 1835-'36, were adjusted, and yet no provision has been made to carry it into effect, so far as two of the parties thereto are concerned. By the terms of that treaty, the United States bound themselves to make a fair and just settlement of all moneys due the Cherokees, and subject to the *per capita* division under the treaty of 29th December, 1835, and which should "exhibit all money *properly* expended under said treaty." But this has not been done in a manner which was satisfactory to any of the parties interested. Nor after this long delay are the Cherokees, to all appearances, much nearer the receipt of the amounts due them than they were when the treaty of 1846 was negotiated. For this delay in the fulfilment of solemn treaty stipulations, the undersigned has no disposition to complain; but it must be apparent to your honorable body that it is attended with great disappointment, losses, and troubles, and that it is important to the peace and prosperity of the Cherokee people that their demands against the government should be adjusted, and the amount due, whatever it may be, promptly paid to them for the country they were *forced* to relinquish east of the Mississippi, and in the full enjoyment of which the United States have been for nearly thirteen years. In order, therefore, to bring to a speedy close as possible the settlement promised the Cherokees, the undersigned respectfully unites in the appeal made to your honorable body by the delegates now representing the "old settler" Cherokees, for the appointment of a tribunal before whom the "Cherokee nation" and "old settlers," parties to the treaty of 1846, shall have the right of appearing with their agents, and who shall decide all questions arising under the treaty of 1835-'6, and the supplement thereto, the act of Congress of June, 1838, and the treaty of 1846, not referred to the Senate, and whose decisions, if approved by the said agents, shall be binding in reference to those matters about which they may be made.

The undersigned is induced to present this memorial through the hope that it may lead to a more prompt settlement of the claims growing out of the said treaties than can be otherwise obtained, and because it is the only way, in his humble opinion, in which full justice can be done to those whom he has the honor to represent.

And as in duty bound he will ever pray, &c.

WILL. P. ROSS.

WASHINGTON, D. C., *March 14, 1849.*

To the honorable the President and Senate of the United States :

The undersigned, on behalf of the Cherokee people, and duly authorized to act for the "*old settlers*," most respectfully submit the following appeal and brief statement of facts for the consideration of your honorable body :

The treaty concluded on the 6th of August, 1846, between three commissioners on behalf of the United States, and certain delegations representing three parties existing in the Cherokee nation, and which was ratified by the Senate, with certain amendments, on the 8th day of the same month, has not yet been executed on the part of the United States, *although it was agreed to for the avowed purpose of settling serious difficulties.*

This treaty, after its ratification, was referred to the Commissioner of Indian Affairs for the purpose of making a settlement with the several Cherokee parties claiming under its provisions.

The commissioner made his report, communicating his settlement to the Secretary of War, on the 10th day of May, 1848, and it was transmitted to Congress by the President of the United States on the 19th of that month, and referred to the Committees on Indian Affairs in both houses of Congress. This settlement found due the "Cherokee nation," or "Eastern Cherokees," \$184,071 28, and the "old settlers," or "Western Cherokees," \$419,763 96. The two Cherokee parties in interest protested against this settlement, and claimed a much larger amount to be due them *upon a proper construction of the treaty of 1835*, under which their claim originates. The party designated by the treaty of August, 1846, as "*the Cherokee nation*," being those Cherokees who removed west under the provisions of the treaty of 1835-'36, recommended that the whole subject should be referred to the Second Comptroller and Second Auditor of the Treasury for settlement. The party designated in the treaty of 1846 as the "old settlers," or "Western Cherokees," being those Cherokees who claimed payment for *the country acquired by them under the provisions of the treaties of 1817, 1819, 1828, and 1833*, which they alleged had been forcibly and illegally taken from them by the operation of the treaty of 1835, *to which they were not a party*, protested against this reference, and expressed their desire that the question of construction involved in the execution of the treaties of 1846 and 1835 should be decided by the Senate, and settlement be made upon *that* decision, or otherwise be referred to a *special tribunal* to be appointed by the President and Senate of the United States.

Under these circumstances, a joint resolution was introduced in the Senate on the 10th day of July, 1848, which passed both houses of Congress, referring the subject to the accounting officers of the Treasury, be-

fore mentioned, for settlement; and they were directed to report thereon at the commencement of the next session of Congress.

On the 10th day of January, 1849, it being found that the accounting officers had made but little progress in the examinations they had commenced, a resolution was adopted by the Senate calling upon them for a report of the amount they adjudged to be due the "*Cherokee nation*," taking "as a basis for their calculation the statement made by the Commissioner of Indian Affairs." On the 15th of the same month, the Second Auditor and Second Comptroller made their report in response to this resolution of the Senate, and by relieving the Cherokee fund of certain charges made against it by the Commissioner of Indian Affairs on account of payments for "*reservations*," "*pre-emptions*," and "*spoliations*" under the name of "*rents*," and other charges not warranted by the treaty of 1835 or 1846, they found due the "*Cherokee nation*," *under the 9th article of the last mentioned treaty*, \$683,974 79. But the accounting officers *did not investigate or report any settlement made with the "old settlers" under the 4th article of that treaty.*

As it was deemed important that an appropriation should be made without further delay in fulfillment, at least in part, of the stipulations of the treaty of 1846, (*which provided for the payment of moneys due under the treaty of 1835*), the Committee on Indian Affairs of the Senate introduced an amendment into the Indian appropriation bill, appropriating the amount found due to the "*Cherokee nation*" by the accounting officers; and the sum of \$586,398 46 for the "*old settlers*," or "*Western Cherokees*." This latter amount was based upon the settlement *previously* made by the Commissioner of Indian Affairs, which awarded to these people \$419,763 96, to which was added the *proportionate increase* made to the "*Cherokee nation*" according to the *construction put upon the ninth article*, which also relieved the claimants under the *fourth article* of the same onerous and improper charges made upon the Cherokee fund.

This increase was \$499,903 51. As the "*old settlers*" were made by the treaty of 1846 the owners of *one-third* of the country sold by the treaty of 1835, they were deemed to be entitled to *one-third of this increase*, which is \$166,634 50. This added to \$419,763 96, already found due them, furnished the aggregate amount of \$586,398 46, inserted in the appropriation bill. To this arrangement the representatives of the "*old settlers*" agreed, although they claimed a much larger difference under a full settlement made *according to the provisions of the fourth article of the treaty, which had not been touched by the accounting officers in their reported settlement.*

The committee of the Senate, however, in adopting the mode of settlement with the "*Western Cherokees*," by having no information from the accounting officers to show that a *different* amount had been charged under the fourth and ninth articles of the treaty on account of "*reservations*, *pre-emptions*, and *spoliations*," under the name of "*rents*," and taking the amount charged under these heads to have been the same, were led into a mistake in making the calculation on behalf of the "*old settlers*." This is explained by the report of the Commissioner of Indian Affairs, dated February 12, 1849, in answer to an inquiry from the Committee on Indian Affairs of the House of Representatives. It is there shown that the *difference in charges* made under the ninth and fourth articles of the treaty reduced the amount of *increase* to which the "*old set-*

tlers" were entitled, \$47,032 66; and that, therefore, there was due them, according to the principle established by the accounting officers of the treasury, the sum of \$539,365 79, instead of \$586,398 46 as required by the amendment to the appropriation bill. The amendment of the Senate, however, did not find favor with the honorable the House of Representatives even after all the explanation was given by the accounting officers and the Commissioner of Indian Affairs; and the appropriation was lost on the last night of the session in the manner known to your honorable body.

The undersigned have thus presented in as brief a manner as possible the causes of their grievances. *They are produced by the non-fulfillment of treaty stipulations on the part of the United States.*

The treaty of 1846, like the treaty of 1835, was a measure forced upon the several parties of Cherokees who signed it. They were compelled to accept its provisions to save their people from utter destruction. These provisions show it to be a mere recommendation of a *mode of settlement* to be adopted by which to adjust difficulties among the Cherokees *created by the treaty of 1835*, and for the purpose of ascertaining and paying to the Cherokee owners the value of the lands sold by that treaty, *which was due at the moment of its ratification on the 19th day of May, 1836.*

The "old settler" portion of the Cherokees, who now make their appeal to your august body, desire it to be kept in remembrance that they had no *voice* nor *interest* in the treaty of 1835. They *then* composed the "Cherokee nation of Indians west of the Mississippi river." They had finally separated from their eastern brethren, as *one-third* of the old nation, in the year 1819, as provided for by the treaty of that year, negotiated by the *Hon. John C. Calhoun*, then Secretary of War, and became the *sole* and *exclusive* owners of a country west of the Mississippi, for which they had exchanged their lands in the east. The great patriot and philanthropist who sustained and encouraged the two parties of Cherokees at that critical period of their affairs is now a distinguished member of the honorable body to whom they look for support in their present difficulties, and he is respectfully, but earnestly, called upon to bear testimony that the "Western Cherokees" *obtained a country of their own on the west of the Mississippi, which they held separate from the "Eastern nation."* That country was forcibly taken from them by the operation of the treaty of 1835; and, after a lapse of more than ten years, the United States, in answer to their continued appeals for redress, agreed to make the remuneration which is found in the fourth article of the treaty of August 6, 1846, *in full payment for that country and national existence!*

The undersigned, therefore, pray on behalf of the "Cherokee nation," and of the "old settlers," or "Western Cherokees," that the honorable the Senate of the United States as part of the treaty-making power, will appoint, or authorize the appointment or designation by the President of the United States, of some tribunal invested with power to settle at once and forever, the claims of the Cherokee parties named and provided for by the treaty of 1846; which claims the Indian Department and accounting officers of the government have failed to settle in a trial of more than two years. The undersigned humbly apprehend that there is nothing to be decided but the mere *question of construction to be placed upon the treaty of 1835*, by which to ascertain the value of the Cherokee lands sold by that treaty, and out of which the parties named in the treaty of 1846 are

to be paid. And they humbly suggest that two commissioners be appointed, who, in conjunction with the Attorney General of the United States, shall constitute a board of commissioners for the purpose aforesaid; and that said commissioners shall be instructed to base their settlement with the Cherokees upon the value of the lands ceded by the treaty of 1835, to be ascertained by their construction of the several articles of said treaty, and the supplement thereto of March, 1836, and of the act of June 12, 1838, making an appropriation to carry the same into effect. Before this tribunal the representatives of the several parties of Cherokees respectfully request that they shall have full liberty to appear, by themselves and with their counsel, for the purpose of presenting and advocating their claims under treaty stipulations. And that, when the decision is made by said board, it shall be submitted to the Cherokee representatives for approval; and if approved, then it shall be a final settlement of all claims mentioned or provided for in the treaty of August 6, 1846, except those expressly referred to the decision of the Senate.

In conclusion, the undersigned deem it to be their sacred duty to state that great distress and serious disturbances (which were quieted by the prospects held out to them by the treaty of 1846,) may be the consequence of the unfortunate delay in executing that treaty on behalf of the United States. If, however, a special tribunal is now designated to act definitely and finally—giving the Cherokee parties a full and fair opportunity of being heard upon the complicated and vexatious questions involved in the settlement of their claim, in accordance with treaty stipulations—it will give the Cherokee people of all parties the assurance that an appropriation will be made at the next session of Congress.

The undersigned, on behalf of the "old settlers," or "Western Cherokees," who have not at this moment received a dollar on any account under the treaty of 1835-'36, although declared by the treaty of 1846 to have been the *one-third* owners of the country sold by that treaty, can only offer as an apology to the honorable President and Senate of the United States, for obtruding upon them at this time, the extreme and pressing necessities of their people.

With respect and veneration, we are, your humble petitioners and friends,

W. S. COODEY,
JOHN DREW,

Representatives in behalf of the "Old Settlers" or "Western Cherokees."

WASHINGTON CITY, *March 15, 1849.*